

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS: 99-0553  
Indiana Corporation Income Tax  
For Years 1994 to 1996**

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**ISSUES**

**I. Property Taxes Attributable to Leased Office Equipment – Gross Income Tax.**

**Authority:** IC 6-8.1-5-1(b); 45 IAC 1-1-10; 45 IAC 1-1-28.

Taxpayer argues that, in calculating its gross income liability, the audit erred in including amounts attributable to the payment of property taxes.

**II. Income Derived from Sales of Used Office Equipment – Gross Income Tax.**

**Authority:** 45 IAC 1-1-8; 45 IAC 1-1-107.

Taxpayer argues that, in determining its gross income tax liability, the audit erred in including amounts attributable to sales of used office equipment.

**STATEMENT OF FACTS**

Taxpayer is in an out-of-state entity in the business of leasing office equipment such as copiers, computers, printers, and other similar items. Taxpayer purchases this equipment from its parent company, stores the equipment at various warehouses, and operates sales and service offices throughout the United States including an office located in Indiana. The Department conducted an audit of taxpayer's business records resulting in the assessment of additional corporate income tax. Taxpayer disagreed with the audit results and submitted a protest. The Department conducted an administrative hearing, and this Letter of Finding results.

**DISCUSSION**

**I. Property Taxes Attributable to Leased Office Equipment – Gross Income Tax.**

In reviewing taxpayer's records, the audit concluded that amounts for "the payment of personal property taxes on the leased equipment" should have been included in the calculation of taxpayer's gross income tax liability. Accordingly, the audit made an adjustment to include "personal property taxes."

Taxpayer protested that adjustment arguing that, “In all rental contracts [taxpayer] includes personal property tax as a factor in determining the cost to the customer.” Taxpayer believes that the audit incorrectly “added back” the property tax amounts to its rental income and that the audit is “double counting this number.” In response, the audit requested that taxpayer substantiate its claim and – to that end – requested a copy of taxpayer’s lease agreement. Taxpayer apparently declined to provide the requested document.

At the time of its protest, taxpayer provided a document purporting to establish that taxpayer considers “prop taxes” in calculating lease payments. Taxpayer refers to this document as its “model.”

Specifically relevant to taxpayer’s own income is 45 IAC 1-1-28 which states that “Rental income is any payment, in cash or other form, for the possession or use of real or tangible personal property for a limited period time. The gross receipts, without any deductions, derived from the lease or rental of real or tangible personal property, whether actually or *constructively received* are taxable at the higher rate . . . .” (*Emphasis added*).

45 IAC 1-1-10 defines “constructive receipts” stating such receipts “are those items of gross income which are not actually received by the taxpayer but which are credited to him, available for his withdrawal, paid to another for his benefit, or represent income to which he is entitled.”

It is not disputed that taxpayer retains ownership of the equipment it leases to its customers. It is not disputed that taxpayer is responsible for the payment of any property taxes attributable to the ownership of that equipment. However, it is unclear as to the manner in which taxpayer accounts for the payment of the property tax. Taxpayer’s “model” suggests that the cost of the property tax on each item of leased equipment is simply passed along as an undifferentiated portion of the lease charge. For example, taxpayer charges customers \$1,200 a year in lease payments, \$100 of that amount is designated for property taxes, customer pays taxpayer \$1,200 each year, and taxpayer forwards the designated \$100 to the taxing jurisdiction. If such is the case, the amount designated as property tax – \$100 in the example – is one portion of the taxpayer’s rental income under 45 IAC 1-1-28 and is properly included as part of taxpayer’s gross income.

However, taxpayer also intimates that the cost of the property tax is “not directly billed to the customer.” This suggests that responsibility for payment of property taxes is, by means of the lease agreement, assigned to each individual lessee and that the lessee pays the amount of property tax directly to the local taxing authority. If such is the case, taxpayer may also not be heard to complain because that amount is one portion of the taxpayer’s “constructive receipts” as defined under 45 IAC 1-1-10. In such circumstances, the individual lessee pays the property tax assessment for the benefit of the taxpayer.

However, taxpayer raises a third basis for its protest. Taxpayer suggests that the audit “double counted” property taxes by including the property tax when it was included in its gross rental receipts and then counting the same amounts a second time when the property taxes were listed separately in taxpayer’s records. Taxpayer has presented nothing which would lead to the conclusion that the audit made such a procedural or factual error. Taxpayer’s bare assertion that the audit added an amount of property taxes twice over does not meet its burden of

demonstrating the proposed assessment is incorrect. Under IC 6-8.1-5-1(b), “The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made.”

### **FINDING**

Taxpayer’s protest is respectfully denied.

## **II. Income Derived from Sales of Used Office Equipment – Gross Income Tax.**

The audit included, as one portion of the taxpayer’s gross income, amounts attributable to the sale of used office equipment. Taxpayer challenged this determination arguing that the audit was “double counting this number.” Taxpayer provided the audit with a one-page workpaper purporting to establish “How [Taxpayer] Does It.” The workpaper suggests that amounts attributable to the disposal of used equipment are listed once as “cash” and once as “sales.” This particular workpaper was also provided at the time taxpayer submitted its protest.

The audit concluded that “taxpayer claims that there was no valid sale of the lease equipment but only a book transaction for the disposition of the lease equipment.” The audit rejected taxpayer’s initial claim that the amounts were “not to be considered as proceeds subject to gross income tax.”

45 IAC 1-1-107 provides in part as follows:

Taxpayers engaged in leasing tangible personal property hold such property as a capital or depreciable asset during the time it is leased. If such assets are sold upon their return to the lessor, or because of the lessee’s exercise of an option to purchase, receipts from the sale are taxable at the higher rate. However, if such assets are sold in the regular course of the taxpayer’s business, the property has character as inventory and the receipts from the sale are taxable at the lower rate.

By whatever means taxpayer arranges for the sale of the used equipment, under 45 IAC 1-1-107, the audit correctly concluded that those amounts – regardless of “loss on disposal” or “accumulated depreciation” – were one portion of the taxpayer’s receipts under 45 IAC 1-1-8.

Again, taxpayer’s suggestion that the audit counted the receipts twice is unsupported. There is no indication that the audit counted the receipts found on one page of the taxpayer’s records and added that amount to a duplicate record of those same receipts found at another location.

### **FINDING**

Taxpayer’s protest is respectfully denied.